IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No.1164 of 2003
Date of decision: December 12, 2006.

Smt. Savitri

...**Petitioner(s)**

v.

Ram Kumar

...**Respondent(s)**

Present: Shri Paramjit Singh Jammu, Advocate for the petitioner.

Shri Rajnish Gupta, Advocate for the respondent.

Surya Kant, J. (Oral)

This contempt petition has been filed by the petitioner-wife, *inter-alia*, alleging that despite the interim order dated October 10, 2000 passed by this Court in FAO No.147-M of 2000, the respondent-husband performed second marriage with one Sunita, daughter of Bhagi Ram, resident of Churianwali, Tehsil Abohar, District Muktsar on 15.2.2002.

[2]. In response to the show cause notice, the respondent appeared and disputed the above stated allegation. Consequently, it was deemed appropriate to obtain a fact-finding report for which vide order dated July 6, 2006 necessary directions were issued to the learned District Judge, Sirsa before whom the parties were directed to appear and lead evidence on the issue as to whether or not the respondent-husband has re-married violating the interim orders passed by this court.

[3]. In response thereto, a fact-finding inquiry was held by the learned Additional District & Sessions Judge, Sirsa, who has sent a report

dated 3.12.2006 concluding that the petitioner-wife has not been successful to prove that the respondent-husband has performed second marriage.

[4]. It may be noticed here that FAO No.147-M of 2000 filed by the petitioner-wife was allowed by this court vide judgment dated 22.1.2003 and the decree of divorce passed in favour of the respondent-husband by the learned Additional District Judge, Sirsa, has been set aside.

[5]. I have heard Learned Counsel for the parties and perused the inquiry report.

[6]. Unfortunately, the learned Additional District Judge, while conducting the fact-finding inquiry, has totally misdirected himself. He has proceeded on a totally erroneous premise as if the petitioner was required to prove that the second marriage performed by the respondent is a validly performed marriage as per Hindu rites and rituals. There was no question of performance of a valid second marriage by the respondent in view of the restraint order dated October 10, 2000 passed by this court. The only question to be gone into was as to whether or not, in order to defeat the interim order passed by this court, the respondent had made some living arrangement with Sunita and are they leading the life as husband and wife? Strangely, despite the documentary evidence led on record, which clearly indicates that the respondent is having children out of his alleged second marriage and/or living-in-relationship with Sunita, the learned Additional District Judge has preferred to discard and overlook the same.

[7]. Still further, the learned Additional District Judge has proceeded with a misconceived notion as if a totally irrelevant issue, namely, the alleged dispute between the respondent and his elder brother, Hanuman or any civil/criminal litigation pending between them, has also

some bearing on the matrimonial dispute between the petitioner and her husband. The very reference to such kind of material, which is alien to the issue, amounts to travelling beyond the brief assigned to it.

[8]. For the reasons aforesaid, *prima-facie*, I am satisfied that the inquiry report dated 3.12.2006 is totally against the evidence on record and exhibits casual approach. It is liable to be rejected and I order accordingly.

[9]. On the basis of the aforesaid inquiry report, no final view can be formed that the respondent has not re-married and/or has not breached the interim directions issued by this Court.

[10]. The matrimonial appeal filed by the petitioner has already been allowed by this court and she has been restored to her legal status of wife of the respondent. In this view of the matter, I do not deem it appropriate to hold a further probe into the allegations made by the petitioner regarding the second marriage allegedly performed by the respondent, particularly when it is an admitted case of the parties that a Criminal Complaint on the same set of allegations has already been filed by her and is pending.

[11]. Consequently, this petition is disposed of with liberty to the petitioner to pursue the criminal complaint, referred to above. It is made clear that the observations made by the learned Additional District Judge in his inquiry report dated 3.12.2006 and/or the observations made by this court in the present order shall have no bearing on the merits of the pending complaint, which shall be decided by the learned Judicial Magistrate in the light of the evidence to be led by the parties and accordance with law.

Rule discharged.

December 12, 2006. [**Surya Kant**]
kadyan **Judge**